

HOUSE No. 1600

By Mr. O’Flaherty of Chelsea, petition of Eugene L. O’Flaherty relative to the appointment of an impartial physician to examine injured workers in workers’ compensation cases. Labor and Workforce Development.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT RELATIVE TO IMPARTIAL MEDICAL EXAMINERS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION. 1. Chapter 152 of the General Laws, as appearing in
2 the 2002 Official Edition, is hereby amended by adding after
3 section 9B, the following section:—

4 Section 9C. An administrative judge or administrative law
5 judge before whom a conference or hearing is scheduled, may
6 appoint a duly qualified impartial physician to examine and make
7 a report of the injured employee. The fee paid to the impartial
8 medical physician for this service shall be a reasonable amount set
9 by the division, and the insurer shall remit payment directly to the
10 impartial physician promptly upon receipt of the approved fee.
11 The report of the impartial physician shall be admissible as evi-
12 dence in any proceeding before the department or a member
13 thereof, provided that the employee and the insurer have season-
14 ably been furnished with copies thereof.

1 SECTION 2. Section 11A of said chapter, as so appearing, is
2 hereby amended by striking out subsection 2 and by inserting in
3 place thereof the following subsection:—

4 (2) Wherever an impartial medical examiner is appointed under
5 section nine, the impartial examiner shall examine the employee
6 and make a report. The report of the impartial medical examiner
7 shall, where feasible, contain a determination of the following:

8 Whether or not a disabling condition exists, (ii) whether or not
9 any such disability is total or partial and permanent or temporary

10 in nature, and (iii) whether or not a personal injury alleged or
11 found to have been arising out of and in the course of the employ-
12 ee's employment probably caused or was a contributing cause of
13 said disabling condition. Said report shall also indicate the exam-
14 iner's opinion as to whether or not a medical end result has been
15 reached and what permanent impairments or losses of function
16 have been discovered, if any. Where the injury claimed is mental
17 or emotional in nature, such report shall contain the said examin-
18 er's opinion as to whether or nor any disabling mental or emo-
19 tional condition has as its significant or predominant contributing
20 cause, an event or series of events within the employment.

21 Failure of an employee to report to an impartial medical exami-
22 nation after due notice and without cause, and failure to submit to
23 such examiner all relevant medical records, medical reports, med-
24 ical histories, and any other relevant information requested which
25 are in the possession of control of the employee without good
26 reason, shall constitute sufficient cause for suspension of benefits
27 pursuant to section forty five. The report of the impartial medical
28 examiner shall be admitted into evidence at the hearing. Either
29 party shall have the right to engage the impartial medical exam-
30 iner to be deposed for purpose of cross-examination. The fact that
31 the impartial examiner has not treated the employee shall not con-
32 stitute sufficient reason for finding any report of an impartial
33 examiner inadequate. The fee for the provision of a deposition by
34 any impartial medical examiner engages under this section shall
35 be a reasonable amount proved by the commissioner, and shall be
36 paid by the deposing party directly to the physician promptly upon
37 receipt of the report; provided, however, that if the decision of the
38 administrative judge is in favor of the employee, the cost of such
39 deposition shall be added to the amount awarded to the employee
40 and be paid by the insurer under the provisions of this chapter. In
41 reviewing and updating said roster, the senior judge shall utilize
42 the criteria developed by the health care services board pursuant
43 to section thirteen.